



DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R2–ES–2012–0071]

[4500030113]

RIN 1018–AY21

Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination for the Proposed Listing of the Lesser Prairie-Chicken as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the lesser prairie-chicken

(Tympanuchus pallidicinctus) as a threatened species and reopen the comment period on the proposed rule to list the species. We are taking this action based on our finding that there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing rule, making it necessary to solicit additional information by reopening the comment period for 30 days.

DATES: The comment period end date is **[INSERT DATE 30 DAYS AFTER DATE OF FEDERAL REGISTER PUBLICATION]**. If you comment using the Federal eRulemaking Portal (see **ADDRESSES**), you must submit your comment by 11:59 p.m. Eastern Time on the closing date.

ADDRESSES: You may submit written comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS–R2–ES–2012–0071, which is the docket number for the proposed rule to list the lesser prairie-chicken as threatened. Then, in the Search panel on the left side of the screen, under the Document Type heading, check on the Proposed Rules link to located the proposed rule. You may submit a comment by clicking on “Comment Now!”

(2) *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R2–ES–2012–0071; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042–PDM;

Arlington, VA 22203.

We request that you send comments **only** by the methods described above. We will post all comments on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the **Public Comments** section below for more information).

FOR FURTHER INFORMATION CONTACT: Jontie Aldrich, Acting Field Supervisor, Oklahoma Ecological Services Field Office, 9014 East 21st Street, Tulsa, OK 74129; by telephone 918–581–7458; or by facsimile 918–581–7467. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

On December 11, 2012, we published in the **Federal Register** a proposed rule (77 FR 73828) to list the lesser prairie-chicken (*Tympanuchus pallidicinctus*), a grassland bird known from southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and the Texas Panhandle, as a threatened species under the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*). For a description of previous Federal actions concerning the lesser prairie-chicken, please refer to the

proposed rule. The proposed listing rule had a 90-day comment period, ending March 11, 2013. We held a public meeting and hearing in Woodward, Oklahoma, on February 5, 2013; in Garden City, Kansas, on February 7, 2013; in Lubbock, Texas, on February 11, 2013; and in Roswell, New Mexico, on February 12, 2013. On May 6, 2013, we reopened the comment period on the proposed listing rule and proposed a special rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the conservation of the lesser prairie-chicken (78 FR 26302). The reopening of the comment period closed June 20, 2013.

Section 4(b)(6) of the Act and its implementing regulation, 50 C.F.R. 424.17(a), requires that we take one of three actions within 1 year of a proposed listing: (1) Finalize the proposed listing; (2) withdraw the proposed listing; or (3) extend the final determination by not more than 6 months, if there is substantial disagreement among scientists knowledgeable about the species regarding the sufficiency or accuracy of the available data relevant to the determination, for the purposes of soliciting additional data.

During the public comment periods, we received multiple comments on the proposed listing and the sufficiency or accuracy of the available data used to support the proposed listing. In particular, commenters raised questions regarding:

- 1) The interpretation of scientific literature in the proposed rulemaking and scientific literature that we may have overlooked in our analysis. Specifically, commenters were concerned with the appropriateness of our interpretation of habitat fragmentation, grassland conversion, and collision mortality.

2) Whether the Service considered the effectiveness of conservation practices of the oil and gas industry, and of agricultural practices, including grazing management, brush management, and water development, in relation to reducing threats. In particular, the U.S. Department of Agriculture provided a letter that questioned the adequacy of our evaluation of conservation measures associated with agricultural practices.

3) The accuracy of short-term and long-term population trends of the lesser prairie-chicken, particularly as it relates to climate change. Specifically, commenters recommended a more thorough analysis of the U.S. Geological Survey's Great Plains modeling effort.

As a result of the public comments we have received, we find that there is substantial disagreement regarding the sufficiency or accuracy of the available data that is relevant to our determination of the proposed listing. Therefore, in consideration of these disagreements, we have determined that a 6-month extension of final determination of this rulemaking is warranted, and we are hereby extending the final determination for up to 6 months in order to solicit information that will help to clarify these issues and to fully analyze this information.

As noted in the proposed listing rule (77 FR 73828), we were previously required by the terms of judicially approved settlement agreement to make a final determination on the lesser prairie-chicken proposed listing rule no later than September 30, 2013. Therefore, with this 6-month extension, we will make a final determination on the proposed rule no later than March 30, 2014.

Public Comments

We will accept written comments and information during this reopened comment period on our proposed listing for the lesser prairie-chicken that was published in the **Federal Register** on December 11, 2012 (77 FR 73828), and on our proposed 4(d) special rule for the species that was published in the **Federal Register** on May 6, 2013 (78 FR 26302). We will consider information and recommendations from all interested parties. We intend that any final action resulting from the proposals be as accurate as possible and based on the best available scientific and commercial data.

In consideration of the disagreements surrounding the data used to support the proposed rulemaking, we are extending the final determination for 6 months in order to solicit information that will help to clarify these issues. We are particularly interested in new information and comments regarding:

- 1) The historical and current status and distribution of the lesser prairie-chicken, its biology and ecology, specific threats (or lack thereof) and regulations that may be addressing those threats, and ongoing conservation measures for the species and its habitat.

- 2) Information relevant to the factors that are the basis for making a listing determination for a species under section 4(a) of the Act, which are:

a) The present or threatened destruction, modification, or curtailment of the species' habitat or range;

b) Overutilization for commercial, recreational, scientific, or educational purposes;

c) Disease or predation;

d) The inadequacy of existing regulatory mechanisms; or

e) Other natural or manmade factors affecting its continued existence.

3) Application of the Lesser Prairie-Chicken Interstate Working Group's draft rangewide conservation plan to our determination of status under section 4(a)(1) of the Act; we particularly request comments or information to help us assess the certainty that the rangewide conservation plan will be effective in conserving the lesser prairie-chicken and will be implemented.

4) Which areas would be appropriate as critical habitat for the species and why areas should or should not be proposed for designation as critical habitat, including whether any threats to the species from human activity would be expected to increase due to the designation and whether that increase in threat would outweigh the benefit of designation such that the designation of critical habitat may not be prudent.

5) Specific information on:

a) The amount and distribution of habitat for the lesser prairie-chicken;

- b) What may constitute “physical or biological features essential to the conservation of the species,” within the geographical range currently occupied by the species;
 - c) Where these features are currently found;
 - d) Whether any of these features may require special management considerations or protection;
 - e) What areas, that were occupied at the time of listing (or are currently occupied) and that contain features essential to the conservation of the species, should be included in the designation and why; and
 - f) What areas not occupied at the time of listing are essential for the conservation of the species and why.
- 6) Information on the projected and reasonably likely impacts of climate change on the lesser prairie-chicken and its habitat.
- 7) Whether measures outlined in the proposed 4(d) special rule are necessary and advisable for the conservation and management of the lesser prairie-chicken.
- 8) Additional provisions the Service may wish to consider for the proposed 4(d) special rule in order to conserve, recover, and manage the lesser prairie-chicken.

If you previously submitted comments or information on the proposed listing rule or proposed special 4(d) rule, please do not resubmit them. We have incorporated them

into the public record, and we will fully consider them in the preparation of our final determination. Our final determination concerning this proposed listing will take into consideration all written comments and any additional information we receive.

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments **only** by the methods described in **ADDRESSES**.

If you submit a comment via <http://www.regulations.gov>, your entire comment—including any personal identifying information—will be posted on the website. We will post all hardcopy comments on <http://www.regulations.gov> as well. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

Comments and materials we receive, as well as supporting documentation we used in preparing the proposed rule, will be available for public inspection on <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0071, or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**). You may obtain copies of the proposed rule on the Internet at <http://www.regulations.gov> at Docket No. FWS–R2–ES–2012–0071, or by mail from the Oklahoma Ecological Services Field Office (see **FOR FURTHER INFORMATION**

CONTACT).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: June 26, 2013

Signed: Stephen Guertin

Acting Director, Fish and Wildlife Service

Billing Code 4310-55

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